

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **April 14, 2008** Time: **9am**

Place: Beehive Room

### Members

(Attendees = x)

#### Commission Members

xChair, Glen W. Roberts, *Utah Cnty*  
xCanyon W. Anderson, *Davis Cnty*  
xJerry M. Houghton, *Tooele Cnty*

David M. Lattin, *Salt Lake Cnty*  
xGarry M. Goodsell, *Iron Cnty*

#### Department Staff

x John E. "Mickey" Braun, Jr  
Ass't Commissioner

xPerri Babalis  
AG Legal Counsel

xBrad Tibbitts  
Dir. P & C

xMark Kleinfeld  
Admin. Law Judge

Gerri Jones  
MC Examiner

xSheila Curtis  
MC Examiner

x Sandra Halladay  
MC Examiner

x Connie Nowland  
MC Examiner

Jilene Whitby  
PIO/Recorder

#### Public

Al Newman Clayton Hansen  
Michael Weichers

Jack Marinello

James Seaman

Dan Paulsen

## MINUTES

### I. Welcome and Introductions / Glen Roberts

Meeting started at 9:00 / David Lattin was excused because of illness

### II. Adoption of Minutes of Previous Meeting

Canyon made a motion to approve the minutes, Garry seconded the motion and the vote was unanimous

### III. Review & Concur with Licensee Report

Canyon made a motion to approve the licensee report with a second from Garry.

### IV. Number of Cases Open & Closed

Discussion on what happened to the cases that were closed, were any of them sent for enforcement. Mickey noted that if they were they would show up on the closed case report as an "e-case opened". The commission made note that it was nice to see so many closed cases for last month.

Jerry made a motion to approve the case report with a second from Canyon.

### V. Review & Concur with Enforcement Case Report

Crossland Title, LLC Residing in Sandy license# 252700. In October on 2006 an agency license was obtained from the State of Utah. Respondent failed to file its escrow rates with the department until September 20 of 2007. Prior to filing their escrow rates the title agency conducted 50 real estate closings which is a violation of UCA Section 31A-19a-209(6). A recommended Penalty of \$8,000 to be paid within 30 days of imposition of the penalty. It was asked if the rates had since been filed, the department confirmed that yes they had filed them.

## VI. Old Business

- **R592-8 Exemption from the 3 year Licensure/Experience Requirement**
  - Mickey talked about the process of getting approval. They will submit a narrative with the application. The licensing division will review the application. The commission will not see the applications. They will be on the regular licensee report. Mickey will send this to rule making. Motions was made my Garry seconded by Canyon.
- **HB466 Bulletin Title Insurance Recovery, Education and Research fund act Initial Assessment.**
  - Mickey discussed what to set the budget amount at, \$350 thousand was agreed a good starting place. Next year the amount can be adjusted. Rule states up to \$20 for indiv. and \$1,000 per agency. Amount will be paid at time of licensing. There will also be an assessment invoice sent out to collect the initial fees. Part of the budget would go into hiring a person for title, this budget amount would start at \$75,000. There would also be money for educational items and research. Once we get all the annual reports in we will have a better idea of where our budget amounts are and what will need to be collected from each title agency. The annual reports are to be filed by April 30. This first time we may not have to go with the 2% assessment.
  - James asked how the money left in the 1% reserve was to be taken out. He thought the rule said the department had to be notified. It was determined that the department does not need to be notified, it is up to the agency on how they want to take it out, 5 year, 10 year period.
  - Mickey will make some corrections and changes to the bulletin and get it posted.
  - Perri asked why the bulletin was being made, Mickey explained it was to be published until the new rule could be written. Perris asked if they could put an expiration on the bulletin. It was determined that would be a good idea then it would expired and not have to be dealt with later to remove it ect.
  - Motion was made by Canyon and seconded by Garry.
- **CE Rule R592-7**
  - This rule will delegate to the Commissioner to approve the CE courses. Then the Commission will get a report like the licensee report as needed. Possibly once a year as there is not that many CE classes to be approved. Mickey will also get this rule over to rule making.
  - Motion was made by Canyon and seconded by Jerry.
- **R590-153 / R592-6, Unfair Inducement**
  - Glen stated that "R" was still a concern. He thought maybe it should not be taken out completely.
  - Al would like a definition on what can or can't be handed out. Everything costs and the clients always want it for free. Where do you draw the line on what can be provided? Need to make an invoice for each item charged?
  - Garry said that a lot of agency's are operating at less then the cost of doing business, we really need to rethink this section. Put it back in with more clarification? Possibly make a list of can and can's but that my be to prohibitive.
  - Canyon suggested that the rule would allow what can be gotten at the county recorders office and nothing else or put a dollar limit on it.

- Glen said why provide what you can't provide, provide what you can get off the county recorders sites.
- Dan thinks the commission would be tackling an ominous task. They need to make a list of can and can't's. Then send out an invoice and hope you collect. Put more teeth into the rule. Make it a violation if they don't collect on the unpaid invoices.
- Glen wanted to know from Sheila if it would be easier to enforce if there was a list of can and can't's. She stated anything that was more clear would help.
- Al said that nothing was stated on the invoice's of what they were for, so how could you enforce something like that. Nothing has been enforced so the industry keeps doing it. The rule needs some clearer language. Same as entertainment, put a dollar amount on it. There is already too much of buying the business. The national trend is to get away from such stuff.
- Canyon said some marketers are spending large amounts on entertainment sometimes even on the same client. He would like to have a limit put on.
- Glen would like to see a value or a limit on what is produced or given out. But would it be hard to enforce? Title industry is there to provide information so you can't stop that.
- Dan suggested setting a limit and then charge after that, put internal limits on.
- Glen suggested putting together a list of what can't be given if and then the rest will have to be paid for up front before the information is released and if not a fine would be imposed.
- Jack Mtg and realtors charge up front why can't we do the same.
- Canyon, we don't market to the consumer, we market to the builders, realtor, mtg. and provide entertainment.
- Glen, we will have to have another hearing on this rule with the changes suggested.
- Garry said the market has changed. It is ok to give out items but they need to charge for them, set a limit. It would be difficult to put a limit on what can and can't be given. Provide the information just make sure you are getting paid for it before the information is given.
- Al, follow up to Garry's suggestions, he thinks it ought to be an escrow rate and file the rate like all other rates.
- Canyon, real estate information and such can be pulled off the county records page and that is all free info. Some charge to print. So how can you charge a rate or set a rate. Maybe determine what is the nominal fee and set it from that.
- Mickey said if you put in the rule that all items are COD then you should solve the problem.
- Glen said he was leaning towards a list. Why are we even providing credit reports and survey's amongst other items. It needs to be clear on what we can and can't provide and maybe list what the charge should be. Maybe we should leave "R" alone for now and address it as problems come up and change it later.
- Jack said if you make it law and put limits then the clients would stop asking.
- Glen suggested that they take away the entertainment part of the rule and concentrate on putting limits on "farm pkg." Concentrate on service but can we survive / compete on just that? Leave some items in but draw a line on what can be spent. Spend less money on the entertainment section and more on the "farm

pgk.” We should maybe review the whole rule again. Next meeting bring a list of items that can or can’t be given and look at the entertainment values.

- Jerry said be careful of the list are we going to allow for a foot hold from the lenders?
- Glen said to put an agenda item to re look at the rule and all commission members bring back the asked for items.
- **Escrow Fees**
  - All members recognized there is a problem with this
  - Canyon said if premiums are the same why do the escrow rates need to be different for rural, city. We need to have a standard rate statewide. Set the rate at \$250 as a minimum for closings.
  - Glen, premiums are different because land values differ in different areas of the state. Set a minimum fee to charge. If they are charging less and losing money on the transaction then they should not be in business anyway.
  - Mickey we have the funds for solvency on the company side but title agency’s are different, as they have no limits that they have to have to start the business. All they really have is the 1% reserve and if they were to go out of business most likely that money would not be there. Bonding would be hard to do because it usually only covers theft. E and O policy’s usually don’t cover fraud either.
  - Jack, can fees be set as to the value of the property? SUTCO has a good escalated fees schedule maybe that would be a good place to start.
  - Glen, we need to fashion a rule of a minimum amount to operate. Start at \$250 as a minimum. Put back on agenda.
- **Transaction Issue**
  - Glen, still an issue. Does not want to open the door to satisfy the cash buyer. There is still some confusion in the industry on a cash closing, even after the bulletin. The department is also not enforcing the cash split. I think the department was waiting for the commission to determine or define “transaction”.
  - Canyon said that the code needs to be amended. It does not say “each” producer needs to issue a policy only that a policy is issued.
  - Mickey said that the bulletin was how the department interpreted the code defining the usage of Insurance not the closing of the action. Commission will have to define transaction in order for anything to change.
  - Al felt the forms proposed would be be used and could it be enforced?
  - Glen said a simple rule stating that you can’t close a cash deal unless issuing a policy and it needs to be enforced.
  - Canyon said we need to define transaction as a real estate transaction between the buyer and seller and still need to provide a title insurance policy. Can the bulletin be formalized into a rule?
  - Glen, just enforce the statute as determined by the bulletin then wait to see it is challenged and go from there. Look closer at 31A-23a-406(1).

## VII. New Business

- **County Recorders**
  - Al stated that the recorders office passed a bill that a document is considered recorded when it is received by the end of the day. But they have gotten back recon. documents and have been asked to correct them. So are they still

considered recorded? Glen said the ULTA is looking into this matter and that they are meeting with some of the County records later in the month.

- Glen suggested that next month they tackle the unfair inducement issue again, stressing to take a really good look at the “farm Package” issue and the entertainment.

**VIII. Other Business from Committee Members**

- Nothing noted

**IX. Adjourned: Motion was made by Garry and Seconded by Jerry.**

**X. Next Meeting , May 12, 2008 9am Beehive Rm.**

**2008 Meetings**

**June 9, Beehive room**

**July 16, Beehive room**

**Aug. 11, Beehive room**

**Sept. 8, Beehive room**

**Oct. 8, Beehive room**

**Nov. 10, Beehive room**

**Dec. 8, Beehive room**